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No. 595 18

In the Supreme Court of the United States

OCTOBER TERM, 1959

THE UNITED STATES OF AMERICA, APPELLANT

v.

JOHN HANCOCK MUTUAL LIFE INSURANCE CO., GEORGE HETZEL AND GRACE MARIE HETZEL

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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CITATIONS

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ARGUMENT

In our jurisdictional statement (pp. 10–13, 16), we referred to both the language and the legislative history of 28 U.S.C. 2410 which indicate that Congress intended the redemption provision in Section 2410(c) to take precedence over conflicting provisions of state law. We pointed to the decisions of the Court of Appeals for the Ninth Circuit[1] and the Supreme Court of New Jersey[2] which have recognized this

[1] *United States* v. *Bank of America National Trust & Savings Assn.*, 265 F. 2d 862, pending on certiorari granted, October 12, 1959, No. 183, this Term.

[2] *First National Bank and Trust Co.* v. *MacGarvie*, 22 N.J. 539.

intent, and argued that the reasoning of the Supreme Court of Kansas in support of its contrary holding is fallacious.

Appellees, in their motion to dismiss or affirm, make no attempt to defend that holding on the grounds expressed by the Kansas Court. Instead, they assert the absence of a substantial federal question, attempt to distinguish the two conflicting cases, and advance entirely new reasons in support of the result reached below.

1. The redemption provision in Section 2410(c) directs in unqualified terms that:

> Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem.

Appellees contend that Congress intended this language to give the United States a right of redemption only in those situations where the senior lienor forecloses by way of a non-judicial sale (Appellees' Motion, pp. 7–9). Otherwise, they argue, the redemption sentence conflicts with the first sentence of subsection (c), which provides that a judicial sale in an action under the statute "shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated."

There is no foundation in the statutory language for construing the redemption provision as not applying to judicial proceedings. Section 2410(a) provides

that, under certain conditions prescribed "for the protection of the United States, the United States may be named a party in *any civil action or suit* * * *"[3] for the foreclosure of a mortgage upon property on which the United States has a lien. The remainder of the Section relates solely to the conditions under which such a "civil action or suit" may be maintained.[4]

Appellees are mistaken in their conclusion that this reading of subsection (c) creates a conflict between its first and third sentences. Statutory history shows conclusively that the redemption provision is intended as a proviso to the first sentence, *i.e.*, as an exception to the general rule that state law governs the effect of a judicial sale.

As originally enacted in Section 4 of the Act of March 4, 1931, 46 Stat. 1528, 1529, Section 2410(c) provided in pertinent part as follows:

> Except as herein otherwise provided, a judicial sale made in pursuance of a judgment in such a suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the law of the State, Territory, or District in which the land is situated * * *: *And provided further,* That where a sale is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem * * *.

[3] Emphasis added.

[4] The sole exception is subsection (d), which provides for administrative release of junior federal liens which have become worthless or unenforceable.

In this version there was thus no doubt that a judicial sale had the effect provided by local law "except as herein otherwise provided," one of which provisos was that the United States should have one year within which to redeem, despite the requirements of local law.

In the 1948 revision of the judicial code, Congress modified this language by deleting the above-quoted "exception" clause and the words "and provided further" which preceded the redemption provision. These changes were made solely in pursuance of the policy of eliminating superfluous language, which was followed throughout the code revision,[5] and effected no substantive changes in the statute. The only relevant portion of the Reviser's Note to Section 2410 states: "[c]hanges were made in phraseology."[6]

2. Appellees further urge that, in any event, the redemption provision does not apply where, as here, the Government seeks affirmative relief in an action under Section 2410. In their view, the authority for the Government's cross-petition in this action derives from the power of the Farmers' Home Corporation to sue and be sued in any state or federal court. See 7 U.S.C. 1014(f)(3). They conclude that the absence

[5] As the House Judiciary Committee stated in its report on the revision (H. Rep. No. 308, 80th Cong., 1st Sess., p. 5):

"A clear and uniform style was an important aim of this revision. Concise, clear, and direct expressions were preferred to verbose, redundant and circuitous language."

[6] See note appended to 28 U.S.C. 2410; the Reviser's Notes were also appended to H. Rep. No. 308, 80th Cong., 1st Sess. In the latter report the House Judiciary Committee stated: "[t]he reviser's notes are keyed to sections of the revision and *explain in detail every change made in text.*" [Emphasis added; *id.* at p. 7.]

of a redemption limitation on that broad authorization means that none is applicable here.

The Farmers' Home Corporation, however, has no connection with this litigation. The governmental litigant here is the United States, both in name and in substance.

Appellees are incorrect in their apparent assumption that the Farmers' Home Administration—which made the loans and took the mortgage giving rise to the Government's lien on the subject property—is identical with the Farmers' Home Corporation. In fact, the two are separate and distinct agencies. The Farmers' Home Corporation was created by Congress, as an independent suable body;[7] the Farmers' Home Administration was established by the Secretary of Agriculture, as an unincorporated agency within his department.[8] The Court has held that such an unincorporated agency within the Department of Agriculture has no legal existence apart from that of the United States. *United States* v. *Remund*, 330 U.S. 539.

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[7] Section 40 of the Bankhead-Jones Farm Tenant Act, 50 Stat. 527, 7 U.S.C. 1014.

[8] 11 Fed. Reg. 9007. The creation of the Farmers' Home Administration was sanctioned by the Conference Committee on H.R. 5991, 79th Cong., 2d Sess., the bill which became the Farmers' Home Administration Act of 1946, 60 Stat. 1062. The committee report explains that the conferees agreed not to use the Farmers' Home Corporation to carry out the functions and duties provided for in the bill, but, instead, "* * * to vest the necessary authority in the Secretary of Agriculture to be administered through the Farmers' Home Administration as an agency of the Department of Agriculture." 92 Cong. Rec. 10397.